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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 17, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE010371

UTILIQUEST, LLC,

Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, §§ 56-265.14 et seq. of the Code of Virginia ("Act"). The Commission's Division of Energy Regulation ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between April 17, 2000, and December 15, 2000, listed in Attachment A, involving Utiliquest, LLC ("the Company"), and alleges that:

(1) Utiliquest, LLC, is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;

(2) During the aforementioned period the Company violated the Act, by undertaking the following conduct:

- (a) Failing on certain occasions to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of §§ 56-265.19 A and D of the Code of Virginia.
- (b) Failing on certain occasions to mark within the time prescribed in the Act, in violation of § 56-265.17 B and §§ 56-265.19 A and D of the Code of Virginia.
- (c) Failing on certain occasions to report to the notification center that lines had been marked or they were not in conflict with the proposed excavation, in violation of §§ 56-265.19 A, B, and D of the Code of Virginia.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations, but admits the Commission's jurisdiction and authority to enter this Order. As an offer to settle all matters before the Commission arising from the Division's allegations made herein, and set out in Attachment A hereto, the Company represents and undertakes that it will take remedial actions and pay a civil penalty as outlined below:

- (1) The Company will pay an amount of \$346,000 to the Commonwealth of Virginia, \$86,000 of which will be paid contemporaneously with the entry of this Order. The remaining

\$260,000 is due as outline in paragraph (2)(a), below, and will be suspended in whole or in part, provided the Company has completed or met specific remedial action for the time period noted. The initial payment of \$86,000 and any subsequent payments, will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Energy Regulation.

(2) The Company will take the following remedial actions:

- (a) The Company will maintain a "no show" rate of 10 percent or less for a period of two (2) years beginning the first day of the month following the entry of this Order, as measured by any member utility code set forth on each ticket Utiliquest, LLC, receives, by each notification center region, and on a statewide basis. If the Company fails to achieve this level of performance in any two consecutive months, the Company will pay a civil penalty equal to the remaining balance of \$260,000, less the actual sum expended in retaining a contractor as required by paragraph (c);
- (b) Utiliquest, LLC, will provide, to excavators, free of charge, Internet access to the Company's ticket database for a period of two (2) years beginning the first day of the month following the entry of this

Order. This access shall allow excavators to view ticket status details and the excavation-site locating sketches;

- (c) On or before November 15, 2001, Utiliquest, LLC, will tender to the Director of the Division of Energy Regulation a notarized certification, signed by an appropriate corporate officer, attesting that the Company has retained an outside consultant to perform an independent audit of the Company's sub-coded tickets for two years beginning the first day of the month following the entry of this Order. Said audit shall examine all subcodes used by the Company and determine if any subcodes were improperly used. The consultant shall work at the direction of the Underground Utility Damage Prevention Advisory Committee, the Commission's Staff and the Company. A report containing the contractor's audit results and recommendations shall be filed with the Division of Energy Regulation, on the tenth business day of every month; and
- (d) The Company will place and maintain C.A.R.E. signs at the entrance of subdivisions under development for the next two years beginning the first day of the month following the entry of this Order. The Division of

Energy Regulation will provide these signs and any replacement signs as needed to the Company.

The Commission, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement. Accordingly,

IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company be, and it hereby is, accepted.

(2) Pursuant to § 56-265.32 of the Code of Virginia, Utiliquest, LLC, shall make payment in the amount of \$346,000 to the Commonwealth of Virginia.

(3) The sum of \$86,000 tendered contemporaneously with the entry of this Order is accepted.

(4) The remaining \$260,000 is due as outlined herein, and will be suspended and subsequently vacated, in whole or part, provided the Company timely complete or meet remedial actions outlined herein.

(5) The failure of Utiliquest, LLC, to carry out any of the obligations undertaken by it in the compromise settlement agreement set forth herein may result in appropriate proceedings against the Company, including Commission proceedings for the imposition of fines for failure to comply with the agreement or for enforcement of the agreement.

(6) The Commission retains jurisdiction over this matter for all purposes.